

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

John James Bell, #192526,)	
aka Omar Abdel-Al-Mumit)	
)	C/A No. 8:07-1639-GRA-BHH
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	(Written Opinion)
Warden, Kershaw Correctional Institution,)	
)	
Respondent.)	
_____)	

This matter comes before the Court for a review of the magistrate's Report and Recommendation made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c), D.S.C., and filed on July 5, 2007. Petitioner filed an action pursuant to 28 U.S.C. § 2254 on June 14, 2007. This is Petitioner's second action filed under 28 U.S.C. § 2254. The magistrate recommends dismissing this successive petition without prejudice and without requiring Respondent to file a return. For the reasons stated below, the magistrate's Report is ADOPTED, and the above-captioned action is DISMISSED without prejudice and without requiring Respondent to file a return.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for

the development of a potentially meritorious claim. *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596 (1972).

The magistrate makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

In order for objections to be considered by a United States District Judge, the objections must be timely and must specifically identify the portions of the Report and Recommendation to which the party objects and the basis for the objections. Fed. R. Civ. P. 72(b); see *United States v. Schronce*, 727 F.2d 91, 94 n.4 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841, 845-47 nn.1-3 (4th Cir. 1985). "Courts have . . . held *de novo* review to be unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendation." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation.

Camby v. Davis, 718 F.2d 198 (4th. Cir. 1983). Petitioner timely filed objections on July 19, 2007.

Petitioner argues that prior petitions dismissed without prejudice are not successive petitions under 28 U.S.C. §2244. However, this Court granted summary judgment for respondent in Petitioner's prior §2254 proceeding. This was a dismissal with prejudice. Therefore, this petition is successive under 28 U.S.C. §2244.

The remainder of Petitioner's objections do not address the successive petition issue, but rather argue the merits of his case. Because the magistrate concluded that Petitioner is procedurally barred from bringing a successive petition without leave from the 4th Circuit Court of Appeals, the Court need not consider objections that go to the merits.

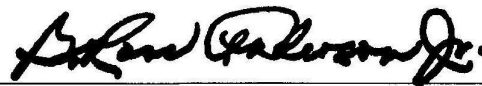
After a review of the magistrate's Report and Recommendation, this Court finds that the report is based upon the proper law. Accordingly, the Report and Recommendation is accepted and adopted in its entirety.

IT IS THEREFORE ORDERED that Petitioner's successive petition pursuant to 28 U.S.C. § 2254 be DISMISSED without prejudice and without requiring Respondent to file a return.

IT IS SO ORDERED.

August 1, 2007

Anderson, South Carolina



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this Order within thirty (30) days from the date of the entry of this Order, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.